



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for unpaid rent. The tenant did not appear at the hearing. The landlord submitted that he sent the hearing documents to the tenant via registered mail on June 3, 2015 but that they were returned as unclaimed. The landlord orally provided a registered mail tracking number as proof of service. The landlord submitted that the address used for service is the tenant's current address of residence. The landlord attempted to serve the tenant again via registered mail on October 21, 2015 and that registered mail was also returned as unclaimed. The landlord did not have the registered mail receipt in front of him for the second attempt at service but he offered to provide it to me shortly after the teleconference call ended. I authorized the landlord to send me a copy of the registered mail receipt for the second attempt to serve, which he did.

In the absence of evidence to the contrary I accept that the landlord has sent documents to the tenant via registered mail using her current address of residence. Pursuant to section 90 of the Act a person is deemed to have received documents five days after mailing so that a person cannot avoid service by refusing to accept or pick up their mail. Therefore, I found the tenant to be deemed served with the hearing documents and I continued to hear from the landlord without the tenant present.

The landlord requested the application be amended to authorize the landlord the authority to retain the security deposit in partial satisfaction of the unpaid rent. I found this request non-prejudicial to the tenant since it reduces any Monetary Order the landlord may be entitled to receive and I permitted the amendment.

Issue(s) to be Decided

1. Is the landlord entitled to recover the amount claimed against the tenant?
2. Is the landlord authorized to retain the security deposit?

Background and Evidence

The landlord submitted that a co-tenancy with the tenant and her now deceased spouse started a number of years ago with a former landlord and the current landlord purchased the property at end of 2011. The landlord was not provided a copy of a written tenancy agreement by the former landlord or the tenants. Rather, the only documentation he was provided was a copy of a Notice of Rent Increase issued in 2010 indicating the monthly rent was being increased from \$850.00 to \$882.00 starting September 1, 2010. For some unknown reason the tenants had been paying rent of \$886.00 instead of \$882.00 since the landlord purchased the property until 2014 when payments decreased, as described below.

The landlord submitted that stating in January 2014 the tenants paid rent of only \$500.00 per month for 12 months. The tenants had advised the landlord that they had fallen on hard times, financially, and that they would catch up on the rental arrears when a WCB settlement was obtained. Then the tenants stated the rental arrears would be satisfied with an inheritance that was expected. The tenants never did pay the rental arrears but did resume paying \$886.00 in January 2015. The landlord understands that the tenant did receive the inheritance in the spring of 2015 but the arrears were not paid.

In February 2015 the male tenant advised the landlord that he had cancer and the tenants paid \$500.00 for each of the months of February 2015, March 2015 and April 2015. In May 2015 rent was not received and the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit. In April and May 2015 the male tenant was in the hospital and the female tenant was with him much of the time but the female tenant was also conducting numerous garage sales. The female tenant was last seen at the property in May 2015. The male tenant died in June 2015. The tenant's adult daughter permitted the landlord entry into the rental unit in June 2015. The landlord put the tenants' remaining possessions in storage.

Although the landlord claims to have suffered loss of unpaid rent of \$6,676.00 for the months of January 2014 to May 2015 the landlord limited his request for a Monetary Order to \$4,999.00 so as to avoid paying the increased filing fee.

Analysis

Although tenancy agreements are to be put in writing under the Act, the Act also recognizes that tenancy agreements may be entered into orally as seen in the definition of "tenancy agreement." Parties who have an oral tenancy agreement remain bound to

fulfill their obligations as provided under the Act. Under the Act, a tenant must pay that is due pursuant to their tenancy agreement and any lawful rent increases.

In this case, I am uncertain as to whether a written tenancy agreement ever existed for this tenancy but if it does, the landlord was not in receipt of a copy. The only documentary evidence pointing to the identity of the parties is the Notice of Rent Increase. It identifies two co-tenants: one who is now deceased and the other that the landlord is pursuing by way of this application. It also provides that the monthly rent increased to \$882.00 starting September 1, 2010.

Where a co-tenancy exists, co-tenants are jointly and severally liable to pay any amounts owed to the landlord under the tenancy agreement or the Act. In this case, the landlord is pursuing one of the co-tenants which is his right to do.

Based upon the Notice of Rent Increase before me, I accept that the tenants were required to pay rent of \$882.00 on the 1st day of every month starting September 1, 2010. I also accept that landlord's verbal testimony that the tenants were actually paying \$886.00 since he purchased the property in 2011, which I find is an overpayment of \$4.00 per month. Where a tenant overpays rent, the tenant is entitled to deduct it from rent otherwise payable.

I further accept the undisputed evidence of the landlord that for the months of January 2014 through December 2014 and February through March 2015 the tenants only paid \$500.00 per month and no rent was paid for May 2015.

Based upon the above, I have determined that the tenant owes the landlord the following amount after giving the tenant credit for overpayments to this landlord of \$4.00 per month (overpayments to the former landlord, if any, may be pursued against that landlord by the tenant). I have estimated that the tenants overpaid this landlord for one month of 2011; all of 2012; all of 2013; and, in January 2015 which is a total of 26 months.

Unpaid Rent: January – December 2014 (\$382 x 12 mos.)	\$4,584.00
Unpaid Rent: February – April 2015 (\$382 x 3 mos.)	1,146.00
Unpaid rent May 2015	<u>882.00</u>
Sub-total	\$6,612.00
Less: overpayments of \$4.00/mo. for 26 months	<u>(104.00)</u>
Rent owed landlord	\$6,508.00

In satisfaction of the rent owed to the landlord in the amount of \$6,508.00 plus an award for recovery of the \$50.00 filing fee, I authorize the landlord to retain the tenant's security deposit, if one was paid, and I provide the landlord with a Monetary Order in the lesser amount of \$4,999.00 as requested.

Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order in the amount of \$4,999.00 as requested for unpaid rent.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 27, 2015

Residential Tenancy Branch

